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MEMO

RECEIVED

TO: Ravalli County Commissioners
FROM: George H. Corn 
DATE: April 21, 2008

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Ravalli County Commissioners

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RE: Number of County Commissioner Votes Necessary To Take Official Action

Dear Commissioners:

You have requested a legal opinion regarding the number of County Commissioner votes necessary to take official action on County business. **The answer is that you must have the vote of at least three (3) commissioners to take official action.**

This memo supplements a November 21, 2007, memo generated by Deputy County Attorney Alex Beal, recommending that you have not less than three (3) commissioner votes to take official action pending further legal research. Karen Mahar has recently reiterated that same recommendation orally to the Commissioners prior to several public meetings. This memo sets for the detailed legal support for these recommendations.

First, in order to conduct an official "meeting" of the Board of County Commissioners to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power, there must be a "convening of a quorum of the constituent membership" (in person or by means of electronic equipment). §2-3-202, MCA. The term "constituent membership" refers to an entire group of individuals possessing statutory authority to make decisions by majority action, such as county commissions. 42 MT Atty.Gen.Op. 51 (1988) Therefore, the law is clear that in order to have a meeting to take official action you must have at least three (3) of the five (5) elected county commissioners present by some means.

The next question is how many votes of the members present at any given meeting are necessary to take action. There is no general statute in Title 7, part 21 (Conduct of County Government) which answers this question, so we must look at several specific statutes to determine the answer.

Local governing bodies (such as a board of county commissioners) generally take affirmative action via ordinance or resolution. Resolutions may be submitted and adopted at a single meeting of the governing body. §7-5-121(2), MCA. Ordinances must be read and adopted after two (2) meetings of the governing body, not less than twelve (12) days apart. §7-5-103(3), MCA. There is specific language in §7-5-103(3) that an ordinance may be "adopted by a majority vote of members present at two meetings." There is no such provision for resolutions. The governing body may waive the second reading for an emergency ordinance, but then the emergency ordinance specifically "requires a two-thirds vote of the whole governing body for passage." §7-5-104, MCA (emphasis added).

These statutes, when read together, indicate that action is generally taken by the county commissioners by a majority of the entire membership—in your case at least three (3) commissioners. The only exception to this is for an ordinance, which can be adopted by a majority of members present after two separate meetings at least twelve days apart. This conclusion is consistent with other statutes addressing decision-making by governing boards. Any state agency designated by law as a quasi-judicial board is required to adopt a resolution, motion, or other decision by a "favorable vote of at least a majority of all members" of that board. §2-15-124(8), MCA. A "quasi-judicial function" is broadly defined under Montana law to include functions of interpreting existing rules and laws, granting or denying privileges or rights, evaluating facts, awarding compensation, fixing prices, ordering action, adopting procedural rules, and holding hearings. §2-15-102(10), MCA.

In regard to independently-elected local government study commissions, a recommendation of a study commission "does not have legal effect unless adopted by a majority of the whole number of members of the study commission." §7-3-181(3), MCA. Generally, municipal governments require a "majority of the whole number of the members elected" to appoint or elect an officer. §7-5-4121(2), MCA. *See also* §7-3-1220(2), MCA (consolidated city-county commission must have the "affirmative vote of a majority of the members elected to the commission" to adopt any ordinance, resolution, order, or vote.); §7-3-4221(1) (b), MCA (cities having a mayor and four council members must have an affirmative vote of at least three members to adopt or reject any motion, resolution, ordinance, or pass any measure); §7-3-4323(1), MCA (municipalities having five commissioners must have the affirmative vote of at least three commissioners "to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided..."). These statutes evidence an overall statutory scheme that local governing bodies need a majority vote of the total number of elected members to taken official action.

There is practical support for this conclusion as well. If a majority vote of a quorum (*i.e.* 2 out of 3 commissioners) could take action at any given meeting, Ravalli County could in effect be operating with a three (3) commissioner board. Such operation runs contrary to Ravalli County voters' specific vote to expand our commissioner board to five (5) members in 2006.

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Finally, there has apparently been some confusion to this issue because of the fact that some other boards within the County may make decisions by majority vote of the members present at any specific meeting. I note for you that these boards are usually of an advisory or administrative nature, not independent local governing bodies or political subdivisions. For example, under §7-1-201(1), MCA, a board of county commissioners "may by resolution establish the administrative boards, districts, or commissions allowed by law or required by law to be established..." For these established boards, "[a]ction may be taken by a majority vote of members present and voting, unless the resolution creating the board, district, or commission specifies otherwise." §7-1-201(11), MCA. Therefore, the board of county commissioners retains the right to establish these administrative boards and specify how many members of those boards may take action. This is distinguished from the statutes for governing bodies themselves, presumably because administrative boards are ultimately responsible to the local governing body that created them.

Given all of the above, it is my advice to the Board of Commissioners that any official action taken by the five-member commission be by majority vote of the entire membership, or at least three (3) commissioners. With that being said, please note again that a quorum of three (3) commissioners constitutes a valid meeting, during which issues may be discussed and public comment taken. However, a vote of the entire quorum (three members) would then be necessary to take any official action. The only exception to this is enactment of ordinances, which may be approved by a majority of members present after consideration at two separate meetings at least twelve days apart per §7-5-103, MCA.

This memo should not change your standard practices, as it is my understanding that the current board has not passed any measure with a vote of fewer than three commission members. If you have any questions, please let me know.

GHC:hs

Cc: Harold Blattie, MACo (electronic copy)